



# Networth News

State of Utah, Department of Financial Institutions, First Quarter 2005

## COMMISSIONER'S COMMENTS

G. Edward Leary, Commissioner

### Consequences of S.B. 172, Division of Real Estate Amendments (Sen. Waddoups) for Loan Wholesalers

Senate Bill 172, Division of Real Estate Amendments sponsored by Senator Waddoups passed the Utah Legislature and was signed by the Governor and becomes law on May 2, 2005.

The Utah Department of Financial Institutions ("DFI") has already received questions concerning the definition of the "*business of residential mortgage loans*" which pursuant to the new law; does **not** include someone "*acting as a loan wholesaler*." According to Utah Code Section 61-2c, the Mortgage Practices Act, if one engages in the "*business of residential mortgage loans*" they must obtain a license from the Division of Real Estate. ("DRE")

Since a "*loan wholesaler*" will not be within the definition of being in the "*business of residential*

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## CHIEFLY SPEAKING

Michael Jones, Chief Examiner

The Department of Financial Institutions is currently accredited by two national associations, the Conference of State Bank Supervisors (CSBS) and the National Association of State Credit Union Supervisors (NASCUS). These associations are member-driven organizations, committed to advancing professionalism in state bank and credit union supervision and strengthening the state-chartered depository institution system. To further these objectives, both associations developed accreditation programs.

The primary purpose of these accreditation programs is to enhance the creditability of state regulatory departments through comprehensive peer reviews. The associations also hoped to reduce the need for duplicative federal regulatory activity in state-chartered institutions. The accreditation programs involve a process of reviewing critical elements that assure the Department is able to meet its statutory responsibilities. This process includes a comprehensive Self-Evaluation Questionnaire and an on-site review of every functional area within the Department: administration and finances, personnel policies and practices, supervisory procedures, training programs, examination policies and practices, and legislative powers.

The Department was first accredited by CSBS in 1994 and by NASCUS in 1995. We were re-accredited by CSBS and NASCUS in 1999 and 2000, respectively. In June of 2004, the Department submitted an updated Self-Evaluation Questionnaire to CSBS to again begin the re-accreditation process that's required every five years. From July 12 through July 14, 2004, CSBS' Review Team was on-site to complete their functional review. The Review Team was comprised of a retired state regulator from Colorado, a former Banking Commissioner from Texas (who also served as the Director of Supervision at the FDIC) and a retired Senior Vice President from the Federal Reserve Bank of Chicago. On November 1, 2004, CSBS notified us that

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*mortgage loans,” a “loan wholesaler” will no longer be required to license with the DRE.*

Utah Code Section 70D-1-10 administered by DFI, says that, “no person may engage in the business of making mortgage loans nor may any person engage in the business of being a mortgage loan broker or servicer, without first filing written notification with the department.” DFI is the department referenced in this statute.

One of the limited number of exceptions to the requirement to file the notification with DFI, is “...all persons that are required to license with the Utah Division of Real Estate pursuant to Title 61, Chapter 2c.”

Since a loan wholesaler is clearly in the “business of making mortgage loans” and they are not “required to license with the Utah Division of Real Estate” it appears the loan wholesalers will now be required to file notification with DFI. **Therefore, an entity that is a “loan wholesaler” will no longer be required to license with DRE; however, they will be required to file a notification with DFI.**

DFI apologizes for the short notice on this change, but DFI was not informed nor consulted in this law change. Going into the Legislative session, DFI received a written synopsis from DRE of what SB 172, would do. According to that synopsis, we understood the bill would “clarify wholesalers’ account executives (would) not (be) required to license.”

Unfortunately, there appears to be a substantive difference between “wholesale account executives” and “loan wholesalers.” “Acting as an account executive for a loan wholesaler” is also exempt under the amended definition; however, the exemption for a “loan wholesaler” was not made clear to us.

DFI in attempting to determine what, exactly, a loan wholesaler does, asked industry experts and from their description, it appears that a “loan wholesaler” will typically accept applications through mortgage brokers and other retail sources. They may fund brokered loans and may also originate their own loans. They will typically sell pools of loans on the secondary market.

Since this definition appears to be “the business of residential mortgage loans” we were unclear until we

contacted the DRE and were informed that “loan wholesalers” do not deal directly with consumers. As such, DRE did not feel compelled to license them.

Unfortunately, this sudden change of statute exacerbates an already confusing and complicated jurisdiction split with mortgage regulation in Utah between DFI and DRE.

**So please, be informed that as of May 2, 2005, “loan wholesalers” that are not required to be licensed at DRE will be required to file the mortgage notification form with DFI.**

Another surprise to DFI was a late floor amendment to SB 172 sponsored by Rep. Paul Ray that removed DFI from a seat on the Residential Mortgage Regulatory Commission and the Appraiser Licensing and Certification Board. Again, DFI received no prior notification nor were we consulted. DFI believes that our input was healthy and vital to the coordination and cooperation between financial institutions and the residential mortgage community and the appraiser community. We express our concern that the lack of financial institution input in this area will only lead to further confusion and lack of coordination in an area already burdened with unclear lines of authority between DFI and DRE.

If you have further questions, please contact Eva Rees, Supervisor of Consumer Credit and Compliance, at the Utah Department of Financial Institutions at (801) 538-8830.~

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their Performance Standards Committee had reviewed the Review Team’s report and had voted to re-accredit the bank regulatory program of the Department.

In March of 2005, the Department submitted an updated Self-Evaluation Questionnaire to NASCUS to begin their re-accreditation process. The NASCUS on-site review took place on April 25 and 26. Their Review Team consisted of the Commissioner of the Texas Credit Union Department and two former state regulators, one from the Missouri Credit Union Department and the other from the Kentucky Department of Financial Institutions. The

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**Application Activity Report**  
Utah Department of Financial Institutions  
*For quarter ending March 31, 2005*

<b>Branch Approval</b>	<b>Address</b>	<b>Received</b>	<b>Status</b>
Transportation Alliance Bank	1605 E Saddleback Blvd, Ogden	3/1/04	Opened 2/14/05
Transwest Credit Union	2277 E Ft Union Blvd, Midvale	8/16/04	Approved 8/30/04
Utah Central Credit Union	5625 W 13100 S, Herriman	8/17/04	Approved 8/31/04
Members First Credit Union	120 E 1000 S, Brigham City	10/22/04	Approved 11/23/04
Salt Lake Schools Credit Union	all existing shared branches	11/19/04	Approved 12/3/04
Utah Independent Bank	120 N Main, Monroe	12/10/04	Opened 2/9/05
Nebo Credit Union	560 N Main, Springville	1/6/05	Approved 1/18/05
Premier Services Credit Union	outlet shared services of Mountain America Credit Union	1/14/05	Time suspended 1/31/05
Balance Rock Credit Union	494 E Main, Price	1/26/05	Approved 2/25/05
SunFirst Bank	910 S Bluff St, St George	2/26/05	Approved 3/7/05
Pacific Rails Credit Union	all existing shared branches	2/2/05	Opened 2/18/05
State Bank of Southern Utah	145 S River Rd, St George	2/18/05	Approved 3/10/05
<b>Relocations</b>	<b>Address</b>	<b>Received</b>	<b>Status</b>
Bank of American Fork	from 408 E 12300 S, Draper to 700 E 12300 S, Draper	11/3/04	Approved 11/15/04
Twin Peaks Credit Union	from 3950 S 700 E #200, SLC to 8191 S 700 E, Ste E, Draper	2/25/05	Opened 3/25/05
<b>Merger</b>		<b>Received</b>	<b>Status</b>
Utah Peavey Federal Credit Union into Weber Credit Union		11/24/04	Approved 12/27/04
<b>De Novo Charter</b>	<b>Address</b>	<b>Accepted</b>	<b>Status</b>
ComData	500 N Market Place Dr. #250 Centerville UT	9/25/03	Approved 12/19/03
<b>Extension</b>		11/19/04	Approved 12/23/04
Allegiance Direct Bank	136 W Center St Cedar City UT	12/1/04	Approved 2/22/05

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<b>De Novo Charter</b>	<b>Address</b>	<b>Accepted</b>	<b>Status</b>
Magnet Bank	2825 E Cottonwood Pkwy #180 Salt Lake City UT	1/28/05	Pending
Lehman Brothers Commercial Bank	2825 E Cottonwood Pkwy #535 Salt Lake City UT	1/28/05	Pending
Union Financial Services Corp.	181 E 5600 S Ste 240 Salt Lake City UT	2/28/05	Pending
<b>Loan Production Office</b>		<b>Received</b>	<b>Status</b>
Centennial Bank	St George	7/26/04	Approved 8/2/04
Barnes Banking Co.	St George	7/27/05	Approved 1/31/05
<b>Field of Membership Expansion</b>	<b>Amend Bylaws to Include</b>	<b>Received</b>	<b>Status</b>
Newspaper Employees CU	the employees of Hurley Transportation Company	7/27/04	Approved 1/25/05
Ogden Schools CU	residents of Weber County	1/9/05	Approved 2/16/05
Salt Lake City CU	SLCC Alumni Association and SLCC Bruins	1/14/05	Approved 2/22/05
Balance Rock CU	residents of Emery County	1/26/05	Approved 3/10/05

***NOTE:** For up-to-date information on application status, see the Department's website at "[dfi.utah.gov](http://dfi.utah.gov)".*

## 2005 LEGISLATIVE UPDATE

Paul Allred, Deputy Commissioner

The department is pleased to provide its annual legislative update. The Utah Legislature passed 371 bills during the 2005 General Session. This article will briefly review seven bills that will impact financial institutions and other entities under the jurisdiction of the Department of Financial Institutions.

### S.B. 138 - Judgment Interest Amendments

Senate Bill 138 limits the interest that can be charged on a judgment related to a payday loan. Senate Bill 138 limits post judgment interest at the federal rate (currently 10%) plus 2%. The department brought an issue, raised by the courts about high interest rates on payday loan judgments, to the industry's attention. The industry took the issue to Senator Mayne who sponsored Senate Bill 138.

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**S.B. 157 - Utah Consumer Credit Code Amendments**

Senate Bill 157 amends the Utah Consumer Credit Code. Among other things, the bill allows state chartered depository institutions to offer second mortgage loans with or without a prepayment penalty. This bill, in combination with Senate Bill 158, provides changes requested by the industry.

**S.B. 158 - Dishonored Instrument Amendments**

Senate Bill 158 amends the Dishonored Instruments Chapter of our Title 7. The amendment clarifies that depository institutions are exempt from the provisions, even if they purchase loan contracts from another depository institution.

**S.B. 215 - Financial Institutions As Limited Liability Companies**

Senate Bill 215 completes the changes to our bill of last year approving limited liability status for industrial banks and Sub S commercial banks. The FDIC attorneys spent a year reviewing our law and advised the department that these changes were necessary.

**HJR 1 - Joint Resolution Related to Financial Institutions**

During the 2003 Session, the Legislature passed Senate Bill 162 which created exempt and non-exempt categories for state-chartered credit unions. In addition, it created a two year task force to study whether the proposed changes should take effect. HJR 1 calls upon Congress to consider Utah's exempt/nonexempt model and to adopt an equitable tax structure for all financial institutions.

**H.B. 30 - Consumer Sales Practices Act**

House Bill 30 prohibits the distribution of unsolicited checks that have the effect of obligating a consumer to purchase a product or service when cashed. The bill in draft form was heard in two interim hearings during the summer and fall. An exemption for depository institutions was agreed upon during the fall. Unfortunately, when the bill reached the Senate the exemption language was removed. The sponsors of the bill were later convinced to reinstate the exemption language. However, the issue of live checks and convenience checks may be studied in the interim.

**S.B. 172 - Division of Real Estate Amendments**

Senate Bill 172 modifies provisions related to the regulation of the real estate, appraiser and mortgage industries by the Division of Real Estate. The Department monitored the bill throughout the session. Unfortunately, during the floor debate in the House, on the second to last day of the session, the bill was amended to remove the Commissioner or his designee from the Appraiser and Mortgage boards. The bill passed both houses with the amendment. The department learned about the amendment the last day of the session. (For a complete discussion of the consequences of this bill see Commissioner Leary's article in this edition.)~

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Department is now waiting to hear the results of the functional review from NASCUS' Performance Standards Committee.

The Department benefits from accreditation in several ways. It gives us an opportunity to review our policies and procedures and analyze how well we are doing. It also gives us an opportunity to see how we compare with the "Best Practices" established nationwide. It also provides support for needed legislation, improves the

effectiveness and efficiency of our examinations, and provides recognition to the Department and its personnel.

The Department is pleased to be accredited by CSBS and NASCUS. We are committed to do what is needed and to make any changes necessary to see that the Department maintains its accredited status.~

### CONCENTRATIONS OF CREDIT

Darryle Rude, Supervisor of Industrial Banks

Recently, FDIC insured depository institutions in Utah received a letter from the San Francisco Regional Office concerning concentrations of credit in commercial real estate (CRE) loans. The letter discusses the elevated concentration of CRE loans in the San Francisco Region and the examination procedures that will be applied to institutions that have aggregate CRE loans in excess of 300 percent of Tier 1 capital. Included with the letter was a list of "Identified Best Practices" in the areas of "Bank Policies" and "Management and Board Reports". While these "Best Practices" are specific to CRE lending, many of the concepts contained in them can be applied to any asset class where a concentration exists.

The Utah Code and Administrative Rules is silent on concentrations of credit, but §7-3-19 for banks, §7-8-20 for industrial banks, and §7-7-33 for savings and loan associations, establish legal lending limits for these institutions. The legal lending is further defined in Administrative Rule R331-23, which generally limits loans to one person to 15 percent of total capital.

The purpose of Rule R331-23 is "intended to prevent one person from borrowing an unduly large amount of a given ...institution's... funds, thereby exposing the ...institution's... depositors, creditors and stockholders to excessive risk."

Rule R331-23-4 provides guidance on combining loans to separate borrowers. Subpart 5 gives specific exceptions of the legal lending limits and additional provisions that allow a borrower under certain circumstances to borrow an additional 10 percent of capital. Subpart 6 specifies **the board of directors' responsibility to review at least annually the most recent financial statements on all loans and extensions of credit to one person exceeding 10 percent of total capital.**

Based upon this review, the board of directors shall approve a determination that the conditions outlined in Rule R331-23-4 do not exist for such loans and extensions of credit. A statement of the above approval shall be incorporated into the minutes of the board of directors meeting at which the review was accomplished. In the case of loans and extensions of credit subject to the limitations of Section 7-3-19(2) and Rule R331-23-3(2), a record of the market value of the collateral securing such loans or extensions of credit shall be maintained as set forth in Rule R331-23-3.

In the past, the Utah Department of Financial Institutions' examiners rarely cited violations for lack of compliance with Administrative Rule R331-23-6. At future examinations compliance with this rule along with adoption of the "Best Practices" outlined in FDIC's letter to the industries will be reviewed to assess the institution's risk management practices. Lack of attention to these areas could result in downgrades in the Asset Quality and Management component ratings and ultimately in the composite rating of the institution. Management is encouraged to review their institution's compliance and risk management practices in the area of

concentrations and legal lending limits to ensure they are fulfilling their fiduciary responsibilities.~

### COMPLIANCE PROGRAMS

Barry Myers, Examiner

Since the terrorist attacks of September 11<sup>th</sup>, we have seen many changes in our lives. Accompanying all of these changes is a flood of new regulations, including the USA Patriot Act. Together with the new regulations, Congress has enhanced or changed many other regulations, most notably Bank Secrecy Act and the Privacy Act.

Depository institutions have long been expected to have a compliance program in place, with policies and procedures to ensure compliance. Institutions have also been expected to provide proper training for employees charged with ensuring the institution's compliance with these federal regulations. However, in light of all the above changes, depository institutions are faced with new challenges. In addition to the enhancements and new regulations, regulators have increased their vigilance of the regulations, including issuing large civil money penalties for non-compliance.

During recent compliance examinations, our examiners have noticed that many institutions have compliance programs which were sufficient in the past, but with new regulations and enhancements are now inadequate. Many institutions have not updated their compliance programs.

Depository institutions are strongly urged to take a close look at their current compliance programs, including policies and procedures, to ensure that each enhancement or new regulation has been addressed appropriately. In addition, institutions should be alert to changes in these consumer protection regulations to ensure that their programs remain up to date.~

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